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7 United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Criminal Case No. 08-CR-1637-WQH

11 Plaintiff,)

DATE: July 7, 2008

TIME: 2:00 p.m.

12 v.)

13 BENJAMIN OCHOA-RAMIREZ,)

**UNITED STATES' NOTICE OF MOTION
AND MOTION FOR RECIPROCAL
DISCOVERY**

14 Defendant.)

15 _____)

16
17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and
19 hereby files its motion for reciprocal discovery. Said motion is based upon the files and records of this
20 case together with the attached memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On May 27, 2008, defendant Benjamin Ochoa-Ramirez was arraigned on a two-count
5 Indictment charging him with importation of marijuana and possession of marijuana with intent to
6 distribute, in violation of 21 U.S.C. §§ 841(a)(1), 952 and 960. Defendant entered a plea of not guilty.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On May 11, 2008, Defendant entered the United States from Mexico through the Calexico, CA
11 West Port of Entry as the driver and sole occupant of a 1999 Ford Windstar. At primary inspection,
12 CBP Officer W. Gerhart noticed that Defendant's hand was shaking when Defendant provided his
13 border crosser card and that Defendant avoided eye contact during their encounter. In response to
14 Officer Gerhart's questioning, Defendant asserted that the vehicle belonged to "a friend." Officer
15 Gerhart observed that the glove compartment contained only the vehicle registration and was otherwise
16 empty. Further, there was only one key on the ignition ring. Based on these observations, Officer
17 Gerhart elected to refer Defendant's vehicle to secondary inspection.

18 At secondary inspection, CBP Officer L. Parker observed Defendant's nervous demeanor.
19 Defendant informed Officer Parker that the vehicle belonged to a friend and that he was en route to a
20 swap meet.

21 A narcotic and human detector dog alerted to the right side rear quarter panel of the vehicle.
22 Subsequent inspection revealed 50 packages of marijuana concealed throughout the vehicle. The total
23 weight of the marijuana was approximately 50.58 kilograms.

24 **B. Defendant's Post-Arrest Statement**

25 Defendant received Miranda warnings and agreed to make a statement. He denied knowledge
26 of the marijuana in the vehicle. According to Defendant, he was to be paid 200 pesos to pick up
27 someone at the Santo Thomas swap meet. Defendant further stated that he had crossed the vehicle into
28 the United States on two prior occasions.

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III

MOTION FOR RECIPROCAL DISCOVERY

The Government has and will continue to fully comply with its discovery obligations. To date, the Government has provided Defendant with 37 pages of discovery, including reports of his arrest, photographs of the vehicle and a DVD of his post-arrest statement.

The Government moves the Court to order Defendant to provide all reciprocal discovery to which the Government is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2. Specifically, Rule 16(b)(1) requires Defendant to disclose to the Government all exhibits, documents and reports of testing or examination which he intends to use in his case-in-chief at trial and a written summary of the names, anticipated testimony, and bases for opinions of experts he intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court grant its motion.

DATED: June 10, 2008.

Respectfully submitted,

Karen P. Hewitt
United States Attorney

s/ David D. Leshner
DAVID D. LESHNER
Assistant U.S. Attorney

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08-CR-1637-WQH
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
BENJAMIN OCHOA-RAMIREZ,)	
)	
Defendant.)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES' NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Hanni Fakhoury, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2008.

/s/ David D. Leshner
DAVID D. LESHNER